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Paper No. 13

In re Application of
Thomas J. Lochtefeld *et al*
Application No. 10/056,893
Filed: January 24, 2002
Attorney Docket No. P-10334-U

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: DECISION ON PETITION
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This is a decision on the petition filed on September 17, 2004 by which petitioners request withdrawal of the holding that this application stands abandoned for failure to file a timely reply to the Office letter dated December 29, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed.

Petitioners allege that this application is not abandoned because petitioners did in fact file a timely and proper reply to the Office letter in question. Petitioners have supported this allegation by submitting a copy of the reply and a copy of a post card receipt showing that the reply was received in the Office on June 3, 2004, together with a request for a two month extension of time. The papers have affixed thereto a 37 CFR 1.8(a) certificate of mailing dated June 1, 2004, a Tuesday after a Monday holiday in the District of Columbia, and therefore a date within the period for filing a reply to Office letter in question, as extended. Therefore, it is clear that this a reply to the Office letter in question was timely filed. See 37 CFR 1.8(b).

However, the Office letter in question was a final rejection. Pursuant to 37 CFR 1.113 and 1.116, there are only certain replies to a final rejection that are proper replies within the meaning of the regulation. The reply filed by petitioners is an amendment, and could, therefore, only be a proper reply if it complied with 37 CFR 1.113(c) and 1.116. Accordingly, the reply was forwarded to the Supervisory Patent Examiner (SPE) of Art Unit 3711 for consideration. The SPE that the reply does not render the application allowable, and raises new issues.

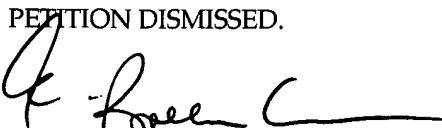
The reply filed on June 3, 2004, although timely, was not a proper reply to the final rejection. Although petitioners were never so notified, petitioners' attention is directed to MPEP § 711.03(c) in which it is stated that

"Evidence of nonreceipt of an Office communication or action (e.g. Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment."

Accordingly, there is no currently no basis upon which the holding of abandonment can be withdrawn. Petitioners are entitled to file a request for renewed petition without fee, provided that the renewed petition is filed within two months of the date of this decision. 37 CFR 1.181(f). Alternatively, petitioners may wish to proceed by filing a petition to revive this application under 37 CFR 1.137.

The application is being returned to storage as an abandoned file.

PETITION DISMISSED.


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